

House Bill 589

My name is Myra Shults and I am a land use attorney who defended counties in subdivision and zoning cases for 7 years. I now consult with counties insured by the Joint Powers Insurance Authority of the Montana Association of Counties.

Section 76-3-609 was the subject of HJR 37 in 2003. I was a member of the working group that developed committee bill SB 116 in 2005. The current wording of 76-3-609 was a part of that bill.

The sponsor is from Flathead County. A deputy county attorney from Flathead County pleaded with the working group to do something about the abuses it was seeing in that county with exemptions. Therefore, subsection (2) found on page 1 of the bill, beginning at line 13, was developed to address his plea.

For example, a husband and wife owned a parcel of land. One quitclaimed the parcel to the other. Then that spouse used the family transfer found in 76-3-207(1)(b) to split the land and give half to the other spouse. Then each spouse used the family transfer to split that half into as many parcels as there were children. Then the children sold their parcels and the purchasers applied for minor subdivisions on each of the parcels. Huge subdivisions resulted with no public hearing and no environmental assessment.

The distinction in 76-3-209 between first minor subdivisions of record (subsection (2) beginning on line 13, page 1) and subsequent minor subdivisions found in subsection (3) beginning on line 10, on page 2, was made in 2005 to allow subsequent minor subdivisions to be reviewed as major subdivisions, if the local government wanted to. However, subsection (4), on page 2, line 13, was added to let each local government decide just how it wanted to review subsequent minors. Some counties have decided they will treat all subdivisions as first minors.

The suggested changes to subsection (2), found on lines 14 and 16 on page 1 of the bill propose to ignore previous subdivisions and exempted parcels if they were created more than 10 years ago. It doesn't matter when the divisions were made. A parcel of land was divided into many other parcels and those parcels exist. The passage of time doesn't alleviate the impacts of previous divisions.

I urge you not to pass this bill out of committee.